

THE NOTARY AUTHORITY IN MAKING AUTHENTIC DEEDS REGARDING OF COPYRIGHT

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THE NOTARY AUTHORITY IN MAKING AUTHENTIC DEEDS REGARDING OF COPYRIGHT

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Abstract

The issue of notary authority in the creation of authentic deeds regarding copyright since the authority of DJKI to directly record copyright. However, in the framework of copyright protection, an authentic notary deed is required to give validity to the copyright. The research method used is normative juridical. The results showed that in the Notary Copyright Act is also authorized to make authentic deeds of the copyright field in order to protect copyright works that will then be recorded to DJKI. In the HCA, notaries have the authority to make authentic deeds of transfer over copyright. Transfer of copyright can be done from the copyright owner to another designated party. However, this transfer does not necessarily get all exclusive rights from the copyright owner. The designated party in the transfer can only get economic rights only. The moral rights to the intellectual property remain owned by the copyright owner. Although in the Act the transfer of copyright is done clearly and in writing either with or without a notary deed, it should be equipped with an authentic deed from a notary. This is based, this transfer of copyright is closely related to the transfer of economic rights, so it takes a deed that has strong legal evidentiary power.

Keywords: Copyright; Notary; Protection.

A. INTRODUCTION

The birth and development of copyright in the realm of the law of objects has a chronological long journey and has experienced dark times in its history. In general, the history of copyright birth is thought to have originated in England in the early 17th century and in France in the late 17th century. The reason the history of copyright births began in England and France is that The United Kingdom and France are considered to represent the two regimes of the legal system that prevail in the world today. The two different legal systems have also given birth to the concept of *economic right* and *moral right* in copyright. From the history of the birth of the copyright of the two countries, we can understand why common law states in general are more aware of the *economic right* of a creation than the

individual of the creator as practiced in the *civil law* state which gives birth to moral rights.¹

Copyright originally describes the right to duplicate or reproduce a copyrighted work. The term *copy right* is not clear who first used it, there is not a single legislation that clearly uses it the first time. According to Stanley Rubenstein as quoted by Djumhana and Djubaedillah, around 1740 it was recorded the first time people used the term copy right. In the UK the use of the term copyright first evolved to describe the concept of protecting publishers from the act of doubling books by others who did not have the right to publish them. It's just that the subsequent development of protection in Copyright Law shifted more to the protection given to the Creator (*author*), no longer just for the protection of the publisher.²

In Indonesia, copyright is interpreted as the exclusive right of the creator that arises automatically based on declarative principles after a creation is realized in real form without reducing restrictions in accordance with the provisions of the laws and regulations. As a state of law, the government always strives to provide legal protection for copyright holders. It is implemented through the laws and regulations, both the law and the implementing regulations. Until now, Indonesia has had Act No. 6 of 1982 on Copyright as amended by Act No. 7 of 1987, then amended again with Act No. 12 of 1997, and lastly both repealed by Act No. 19 of 2002 on Copyright. Even now, Act No. 28 of 2014 on Copyright has been present and revoked Act No. 19 of 2002 on Copyright.³

The government through the Ministry of Law and Human Rights has opened intellectual property registration service rooms. The registration of copyright in the General Register of Copyright does not imply an endorsement of the content, meaning the purpose of the form in which the copyright is registered.⁴ Through the Directorate General of Intellectual Property Rights (DJHKI) or registered IPR consultants, copyright owners can register all kinds of inventions in all fields. Especially at this time, registration can be done by accessing the official page. However, not all copyright owners are aware of this information and services. There are owners who come to the Notary to take care of their intellectual property rights. In Act No. 28 of 2014 on Copyright, there is actually no notary authority to register intellectual property rights.⁵

Copyright protection also needs to be done through the existence of authentic deeds to prove its validity, so it needs to be discussed also about its history and comparison in some UUHC that have been applicable in Indonesia until finally associated with the authority of notaries in making authentic deeds related to copyright.

1 Elyta Ras Ginting, *Hukum Hak Cipta Indonesia*, Citra Aditya Bakti, Bandung, 2012, page.37.

2 Muhammad Djumhana & Djubaedillah, *Hak Milik Intelektual*, Citra Aditya Bakti, Bandung, 2014, page.47-48.

3 See Article 1 Number 1 of Act No. 28 of 2014 on Copyright.

4 Muchtar Anshary Hamid Labetubun, A Legal Awareness of Copyright on Regional Song Creators, *IJLR: International Journal of Law Reconstruction*, Vol. 5 No. 1 April 2021, page.49-61

5 Sahifa, <https://notariscimahi.co.id/notaris/kewenangan-notaris-di-bidang-haki>.

B. RESEARCH METHODS

This type of research is normative legal research with a normative juridical approach. Normative juridic is finding the truth of coherence to examine whether the rule of law is in accordance with legal norms and whether the norm in the form of orders or prohibitions is in accordance with legal principles, as well as whether a person's actions (act) are in accordance with legal norms (not just according to the rule of law) or legal principles.⁶ The nature of the research used in this research is prescriptive analysis, i.e. studying the purpose of law, the values of justice, the validity of the rule of law, legal concepts, and legal norms. This research was conducted with a statute approach.

C. RESULTS AND DISCUSSION

1. History of Copyright Protection Law in Indonesia

Since 1886, countries in Western Europe have adopted the Bern Convention, aimed at the protection of creations in literature and art. The tendency of Western European countries to be participants in this Convention prompted the Kingdom of the Netherlands to renew its copyright law which had been in force since 1881 with a new copyright law on 1 November 1912, known as *Auteurswet* 1912. Shortly after the enactment of this law, the Dutch government committed itself to the Bern Convention of 1886.⁷ Indonesia was formally juridically introduced to copyright issues in 1912, namely at the time of the promulgating of *Auteurswet* (Wet van 23 September 1912, *Staatblad* 1912 Number 600), which came into force on 23 September 1912.⁸ After Indonesia's independence, the provisions of the 1912 *Auteurswet* were then still declared valid in accordance with the transitional provisions contained in Article II of the Transitional Rules of the 1945 Constitution, Article 192 of the Provisional Constitution of the Republic of Indonesia and Article 142 of the Provisional Constitution of 1950. The enactment of *Auteurswet* 1912 is certainly temporary.⁹

In 1958, Prime Minister Djuanda declared Indonesia out of the Bern Convention and declared that all provisions of the copyright law no longer apply, so that Indonesian intellectuals could utilize foreign works, copyrights, and works without having to pay royalties. With consideration so as not to make it difficult for Indonesia in the association of the international community, the attitude was reviewed after the New Order came to power. The old Dutch-era provisions on copyright, namely *Auteurswet* 1912 apply again.¹⁰ After 37 years of Indonesia's independence, Indonesia as a sovereign state invited a national law on

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6. Ester Mahmud Marzuki, *Penelitian Hukum*, Prenada Media Group, Jakarta, 2014, page 47

7. Suyud Margono, *Hukum Hak Cipta Indonesia: Teori & Analisis Harmonisasi Ketentuan World Trade Organization/WTO-TRIPs Agreement*, Ghalia Indonesia, Bogor, 2010, page 53

8. Rachmadi Usman, *Hukum Hak atas Kekayaan Intelektual: Perlindungan & Dimensi Hukumnya di Indonesia*, Alumni, Bandung, 2003, page. 56.

9. Suyud Margono, *Op.Cit.*, page. 57

10. Haris Munandar & Sally Sitanggang, *Mengenal Hak Kekayaan Intelektual (Hak Cipta, Paten, Merek & Seluk-beluknya)*, Penerbit Erlangga, Jakarta, 2008, page.22

copyright, precisely on April 12, 1982, the Indonesian government decided to revoke Auteurswet 1912 Staatsblad Number 600 of 1912 and at the same time invite Act No. 6 of 1982 on Copyright contained in the Indonesian Gazette of 1982 Number 15. This law is in principle the same regulation as Auteurswet 1912 but adapted to the circumstances of Indonesia at that time. In the implementation of Act No. 6 of 1982, there were many violations, especially in the form of criminal acts of piracy against copyright, which has been going on from time to time with increasingly widespread and has reached a level that endangers and harms creativity to create, which in a broader sense will also be endangering the joints of life in the broadest sense.¹¹

The development of copyright infringement activities is influenced by various factors. The reasons for this situation are based on:

- a. Still not the ethics to appreciate someone's copyrighted work;
- b. Lack of understanding of the meaning and function of copyright, as well as the provisions of copyright law in general, caused by a lack of counseling on the subject;
- c. Too light a threat specified in copyright law against copyright piracy.¹²

But beyond the above factors, observations of Act No. 6 of 1982 itself also showed the need for some refinements so as to ward off such violations. In fulfilling the demands of the narrowing of the Copyright Act 1982, then on September 23, 1987 the Government with the approval of the House of Representatives, enacted Act No. 7 of 1987 on changes to Act No. 6 of 1982 on Copyright. In Act No. 7 of 1987 the scale of protection was expanded, among the fundamental changes that occurred in it was the validity period of copyright protection extended to 50 years after the death of the creator. Works such as recordings and videos are categorized as protected works. In addition, one of the weaknesses of Act No. 6 of 1982 in tackling copyright infringement due to criminal regulations as a complaint. Investigators can only make arrests against the culprit after a complaint from the victim. Therefore, in Act No. 7 of 1987 the criminal regulations were changed to ordinary decals. Citizens can report the existence of copyright infringement events without the need for complaints from victims, investigators can make arrests against the culprit.¹³

Although changes to copyright arrangements through the Copyright Act 1997 have included several adjustments to articles in accordance with *the Trade Related Aspects of Intellectual Property Rights* Agreement (TRIPs), there are still some things that need to be refined to provide protection for intellectual works in the field of

11 Rahmadi Usman, *Op. Cit.*, page.59.

17 Suyud Margono, *Op.Cit.*, page.58

13 Gatot Supramono, *Hak Cipta & Aspek- Aspek Hukumnya*, Rineka Cipta, Jakarta, 2010, page. 5-6.

copyright, including efforts to advance the development of intellectual works derived from artistic and cultural diversity. Indonesian nation. With this in mind, it is considered necessary to replace the Copyright Law with Act No. 19 of 2002 on Copyright. Then realized because the wealth of art and culture, as well as the development of intellectual capabilities of Indonesian people require adequate legal protection so that there is a healthy business competition climate needed in carrying out national development, a new Copyright Law was established, namely Act No. 28 of 2014 on Copyright to be in accordance with the development of law and community needs. The figures of the House of Representatives of the Republic of Indonesia and the Government replacing Act No. 19 of 2002 on Copyright with this Law is an earnest effort from the state to protect the economic rights and moral rights of creators and owners of related rights as an important element in the development of national creativity. Denied economic rights and moral rights can erode the motivation of creators and owners of related rights to be creative. The loss of motivation like this will have a wide impact on the collapse of macro creativity of the Indonesian nation. Reflecting on developed countries it appears that adequate protection of copyright has succeeded in bringing significant creative economic growth and making a real contribution to the economy and the welfare of the people.

2. Comparison of Act No. 19 of 2002 on Copyright with Act No. 28 of 2014 on Copyright

The repeal of the Copyright Law in 2002 and the enactment of the Copyright Law in 2014 have its own implications for the regulation of copyright law in Indonesia. There are several new content meters contained in the Copyright Law of 2014 which is different from the Copyright Law of 2002. The new materials stipulated in the Copyright Act of 2014 are as follows:

a. Extension of Copyright Protection Period

If observed, in the provisions of the Copyright Act of 2002, the application of copyright protection time is 50 (fifty) years when the creator dies. Meanwhile, in the Copyright Act of 2014, copyright protection is carried out with a longer time of 70 (seventy) years on the grounds of more respect and protection of the creator so that they have longer to enjoy their economic rights.

The arrangement regarding the extension of the legal protection period for copyright in the Copyright Act of 2014 is done to better protect the economic rights and moral rights of the creators in 20 Article 29 paragraph (2), Act No. 19 of 2002 on Copyright. 21 Article 58 paragraph (1), Act No. 28 of 2014 on Copyright. 22 Results of the Working Committee Meeting (Panja) of the Draft Copyright Law with the Directorate of Copyright of the Ministry of Law and Human Rights in more detail. Therefore, the extension of copyright protection becomes very important, not only intended for the creators but also for their heirs, in order to enjoy the economic rights of the

copyright. Basic rights, namely the exclusive right to use or give permission to other parties to use the work as agreed.¹⁴

b. Better Protection of Economic Rights of Creators And/or Owners of Related Rights, Including Limiting the Transfer of Economic Rights in the Form of *Sold Flats*

In the Copyright Act of 2014, new material on protection against the transfer of economic rights in the form of *sold flats* will return to the creator after 25 (twenty-five) years. Article 18 of the Copyright Act of 2014, which is meant by a break-up sale is an agreement that requires the creator to submit his creation through payment by the buyer so that the economic rights to the creation are transferred entirely to the buyer without time restrictions, or in practice known as *sold flat*.

c. Effective Dispute Resolution through Mediation, Arbitration, or Court Proceedings, as well as the Application of Complaints For Criminal Charges.

As already explained above, that copyright is the exclusive right of the creator that arises automatically based on declarative principles after a creation is realized in real form without prejudice to restrictions in accordance with the provisions of the laws and regulations. That way, any act intentionally or without the right to announce or reproduce a creation can be categorized as a copyright crime. The Copyright Act has basically stipulated that copyright crimes are ordinary.

d. The manager of the trading venue is responsible for the place of sale and/or infringement of copyright and/or related rights in the shopping center he manages.

Material regarding the manager of the trading venue is responsible for the place of sale and/or infringement of copyright and/or related rights in the shopping center it manages has been regulated in Article 10 of the Copyright Act of 2014. The manager of the shopping center can be considered to have absolute responsibility for the occurrence of copyright infringement in the sale of goods from copyright infringement even though he does not know what is sold in the stores in the shopping center, the legal system or in this case the enforcement of rules regarding copyright is the result of the complexity of the problems that exist in society.¹⁵

e. Copyright as an intangible moving object can be used as a fiduciary guarantee object

The arrangement is seen as making creators or creators to be more excited in creating their works, considering that the copyright can later be used as collateral banking guarantees. The

14 Dina Widyaputri Kariodimedjo, *Perlindungan Hak Cipta, Hak Terkait, & Desain Industri, Mimbar Hukum*, Vol.22 No.22 June 2010, page.265-282

15 Dede Sukma Aristya & Nyoman Mas Ariyani, *Perlindungan Hukum Terhadap Produsen Atas Penyebaran DVD Bajakan di Indonesia (Ditinjau Dari Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta)*, *Jurnal Kertha Semaya*, Fakultas Hukum Universitas Udayana, Vol. 4, No. 4 2016, page.4

implementation that copyright can be used as a fiduciary guarantee requires further regulations that support it because currently Bank Indonesia or OJK does not have a special department to determine the guarantee value of a copyright.

f. Arrangements regarding collective management institutions

The Copyright Act of 2002 is regulated but has not been regulated in detail. Article 45 paragraph (4) of the Copyright Act of 2002 only mentions "the amount of royalties that must be paid to the copyright holder by the licensee is based on the agreement of both parties based on the agreement of professional organizations". Copyright Royalty as a bill of rights from a License agreement which is a reward for the use of economic rights of a work which is paid as compensation for granting a permit or license from the owner or copyright holder to another party.¹⁶ Therefore, the Copyright Act of 2014 has regulated in detail the existence of LMK. In the Copyright Act of 2014, the arrangement regarding LMK is more directed to the "one-stop-shop" mechanism. This means that the withdrawal of royalties to the community is done through a mechanism of 1 (one) door. Furthermore, this provision regulates an LMK container which is a combination of several LMK-LMK that already exist in Indonesia.

g. Traditional cultural expression

Material regarding traditional cultural expression has been detailed in the Copyright Act 2014. This idea is done, because efforts to protect the expression of traditional culture and copyright to creation whose creator is not known are perceived to receive less attention from the Government. Although it has been previously regulated in Article 10 of the Copyright Act of 2002, but the arrangement is felt not yet maximal, because the Government until now has not issued ¹⁵plementing regulations as mandated by Article 10 paragraph (4) of the Copyright Act of 2002.

The Copyright Act of 2014 is considered to be in accordance with the theory of legal protection put forward by Roscoe Pound. Where the law is a set of rules that serve as a tool to identify and adjust the various interests of the people who intersect by trying to cause minimal impact and loss. The law is intended as a tool to reduce losses due to clashes between various social interests in society.

Copyright is a personal property, then copyrights can be equated with a form of wealth (property),¹⁷ The Copyright Act of 2014 is considered a legal reform, which is a form of effort by the Government to protect the economic and moral rights of creators so that creators can be motivated to continue to be creative and create

16 Djoko Hadi Santoso, Agung Sujatmiko, Royalti Hak Cipta Sebagai Obyek Jaminan Fidusia, *Masalah- Masalah Hukum*, Vol. 46 No.3, July 2017, page.198-204

17 Anis Mashdurohatun, Lily Mariam Nasution, Copyright Transfer of Inheritance Based on Justice Value, *International Journal of Innovation Creativity and Change*, Vol. 12, Issue 12, 2020, page.1266

new works that can improve the country's economy, especially in the face of the ASEAN Economic Community (AEC) 2015. Because with adequate and maximum protection of copyright, the creative industry in Indonesia will continue to grow and make a great contribution to Indonesia's national economy

3. Notary authority in making authentic deeds in the field of Copyright

Notary is a public official who is authorized to make authentic deeds as long as the making of certain authentic deeds is not specific to other public officials.¹⁸ Notaries include temporary notaries, substitute notaries and special replacement notaries. Then, the Association of Indonesian Notary Associations in achieving its goal is the establishment of truth and justice and maintaining the dignity of the notary position as a quality general official in the framework of devotion to God Almighty, Nation and State in order to realize legal certainty and the development of unity and unity and welfare of its members.

¹⁴ The Indonesian Notary Association has a very important function in the enforcement of the professional code of ethics for Notaries, through the Honorary Board which has the main task to conduct supervision over the implementation of the code of ethics. "Supervision of a Notary is indispensable in the event that the Notary ignores the dignity and dignity or duties of his office or commits violations of general regulations or commits other errors in carrying out his position as a Notary."¹⁹

Article 1 number (1) of Act No. 2 of 2014 on Amendments to Act No. 30 of 2004 on Notary Law explaining the notion of Notaries is a general official who is authorized to make authentic deeds and has other authority as referred to in this Law or based on other laws. And furthermore, also called, the Notary Organization is a professional organization of Notary positions²⁰ in the form of incorporated associations to provide affirmation that notaries are the only ones who have certain authority, not other officials, can be seen from the above definition that: a. Notary is general office b. Notaries are the only officials authorized to create authentic deeds provided by law. Although these officials only perform functions as general officials, they are not General Officials. Soegondo Notodisoerjo, stated that in order to be able to make authentic deeds, one must have a position as a "general official". In Indonesia, an advocate, although he is an expert in law, is not

18 Haingo Rabanirajona, Role of Notary in Abroad and Indonesia, *Jurnal Akta*, Vol. 7 No. 4, December 2020, page.343

19 Rudiono, Herline, *Asas Keseimbangan bagi hukum Perjanjian Indonesia, Hukum Perjanjian berlandaskan Asas-asas Wigati Indonesia*, PT.Citra Aditya Bakti, Bandung, 2006, page.26

20 Deen, Thaufiq., Ong Argo Victoria & Sumain, *Public Notary Services In Malaysia. JURNAL AKTA: Vol. 5, No. 4, 2018*, page.1017-1026 see too Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani, *Code of Ethics and Position of Notary in Indonesia, Sultan Agung Notary Law Review*, Vol.2 No.4, 2020, page.397-407

authorized to make authentic deeds, because he does not have a position as a "general official".²¹

A notary has the capacity to make regulations on every conduct or contract that is stipulated by the law to be documented into an authentic deed.²² The notary public should assure that the deed they establish is consistent with the predetermined regulation, thus, the interests of pertinent parties can be assured with the deed.²³ The position of the Notary Public Official in the midst of the community and the power of proof of the authentic deed he made, it can be said that the position of Notary is a position of trust.²⁴

From the description of the above article, it can be stated that the obligation to the Notary to make a deed, unless there are reasons that have a basis for rejecting the making of the deed. Notaries provide legal certainty to the public regarding the making of authentic deeds.²⁵ Notaries in carrying out their duties are also required to provide legal advice and explanations regarding the provisions of the Law to the parties concerned. Against an authentic deed made before a Notary, can be seen from the elements listed in article 1868 of the Civil Code mentioned above, namely as follows: a. That the deed is made in the form of the law; b. That the deed is made by or before a general official; c. That the deed is made by or before the competent authority to make it in the place where it was made. In connection with the duties and authorities of notaries given by the government, for that notary in carrying out his duties must comply with the provisions that have been applied by existing regulations, both the Law and the Notary Professional Code of Ethics. Notary as one of the law enforcers because the notary makes written evidence that has the power of proof,²⁶ therefore it is necessary to be given rules of professional ethics in the form of a code of ethics, in addition to being given to him a place to shelter in a Notary

- 21 Kartini Soedjendro, *Perjanjian Peraihan Hak atas Tanah yang Berpotensi Konflik*, Kanisius, Yogyakarta, 2001, page 43.
- 22 Deviana Yuanitasari, The Role of Public Notary in Providing Legal Protection on Standard Contracts for Indonesian Consumers, *Sriwijaya Law Review*, Vol. 1 Issue 2, July 2017, page.179-189
- 23 Ghansham Anand, Agus Yudha Hernoko, Mokhamad Khoirul Huda, The Insurance Of Liability As an Attempt of Risk Transferring Over The Loss Caused by Notary Public And Land Deed Officials, *Yustisia*, Vol. 7 No. 2 May-August 2018, page.194-210
- 24 Anis Mashdurohatun, Belahim, Reconstruction of Notaries Liability on Their Authentic Deed Based on Justice Value: Moderating Role of Supply Chain Management, *International Journal of Supply Chain Management*, Vol. 9, No. 3, June 2020, page.605-612
- 25 Andi Evy Anggraeni TR, The Essence Of Notary Legal Offering In West Land Rights Disputes (Eigendom Verklaring), *International Journal of Social, Policy And Law (IJOSPL)*, Vol. 2 No.1 February 2021, page.1-13
- 26 Dewi Padusi Daeng Muri, Galang Prayogo and Faisal Arif, The Rights And Obligations Of Notaries According To Indonesian Law Concerning Notary Position, *International Journal of Mechanical Engineering and Technology (IJMET)*, Vol. 9, Issue 8, August 2018, page. 875–881

Profession organization called the Indonesian Notary Association, or abbreviated as INI²⁷.

In the Copyright Act, notaries have the authority to make authentic deeds of transfer over copyright. Transfer of copyright can be done from the copyright owner to another designated party. However, this transfer does not necessarily get all exclusive rights from the copyright owner. The designated party in the transfer can only get economic rights only. The moral rights to intellectual property remain owned by the copyright owner. Although in the Act the transfer of copyright is done clearly and in writing either with or without a notary deed, it should be equipped with an authentic deed from a notary. This is based, this transfer of copyright is closely related to the transfer of economic rights, so it takes a deed that has strong legal evidentiary power.²⁸

D. CONCLUSION

Indonesia once had Act No. 6 of 1982 on Copyright as amended by Act No. 7 of 1987, then amended again with Act No. 12 of 1997, and lastly both repealed by Act No. 19 of 2002 on Copyright. E²⁵n now, Act No. 28 of 2014 on Copyright has been present and revoked Act No. 19 of 2002 on Copyright. Copyright protection comparisons have developed over time. In particular, regarding the authority of authentic deeds made by Notaries, including those in UUHC Notary is also authorized to make authentic deeds in the field of copyright in order to protect copyright works that will then be recorded to DJKI.

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27 Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. Sultan Agung Notary Law Review, 1 (1), 46-56,

28 *Ibid*.

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